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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Reed E. Hundt, Chairman
The Honorable James H. Quello
The Honorable Andrew C. Barrett
The Honorable Rachelle B. Chong
The Honorable Susan P. Ness
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Letter
PP Docket No. 93-253

Dear Chairman Hundt and fellow Commissioners:

On behalf of BET Holdings, Inc. ("BHI"), a publicly traded minority-owned business, I urge you to adopt rules that provide meaningful opportunities for minority-owned businesses to acquire PCS spectrum and to deploy new and innovative telecommunications systems. Unless the Commission clarifies and refines its generic competitive bidding rules, the anticipated involvement of designated entities in the provision of broadband PCS will be jeopardized.^{1/} Given the capital intensive nature of broadband PCS, it is imperative that the auction rules afford minority and female-owned entities the ability to challenge entrenched wireless providers.^{2/}

1/ Attached, please find a short summary of BHI's comments as discussed in this letter.

2/ The difficulties of competing against incumbent cellular providers must not be underestimated. On May 31, 1994, the President and Vice Chairman of McCaw Cellular filed an affidavit with Judge Greene that explained the company's reasons for agreeing to merge with AT&T. Specifically, "one of the principal reasons McCaw agreed to merge with AT&T was to address the serious financing needs faced by McCaw McCaw's current debt burden is the result of acquiring licenses and building the necessary network and support services over the past ten years -- from the ground up -- in competition with well-established and
(continued...)

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I. PREFERENCES FOR MINORITY AND FEMALE OWNED
BUSINESSES SHOULD NOT REQUIRE THAT SUCH BUSINESSES
BE SMALL OR DISADVANTAGED

The Commission should confirm that preferences available to minority and female-owned businesses are not limited solely to small businesses.^{2/} It was not anticipated that the Commission would provide preferences only for "small" minority-owned businesses, or in any way limit the availability of minority preferences according to a pre-determined revenue cap,^{3/} which would contradict the explicit and unambiguous directive of Congress. Moreover, such a policy would shut out designated entities that have the financial wherewithal to operate broadband PCS systems successfully.

BHI understands that the Commission is considering the establishment of license blocks available for bidding only to designated entities, and businesses and individuals that are characterized as "entrepreneurs." As presently envisioned, these parties would be subject to a revenue cap. Although it agrees that such a proposal offers important public benefits, BHI opposes the revenue limitation, as it applies to minority or female-owned businesses, because it is contrary to Congress' explicit directive to promote their participation.^{4/}

2/ (...continued)
better-financed incumbent providers." See Memorandum in Support of AT&T's Motion For A Waiver Of Section I(D) Of The Decree Insofar As it Bars The Proposed AT&T-McCaw Merger, Appendix D, Affidavit of James Barksdale and Wayne Perry at pp. 6-7 (filed May 31, 1994).

3/ See Omnibus Budget Reconciliation Act, Sections 309(j)(3) (B) and (4)(C).

4/ See e.g. House Report No. 103-111 at 582 ("the Commission should adopt regulations ... to ensure that businesses owned by members of minority groups and women are not in any way excluded from the competitive bidding process") (emphasis added).

5/ Such a result does not comport with Congressional intent, nor is it rationally related to the Commission's goal of promoting minority-owned business participation. See generally ALLTEL Corp. v. FCC, 838 F.2d 551 (D.C. Cir. 1988) (finding revenue cap to be arbitrary and capricious absent showing of the rule's rationality).

Nevertheless, if a revenue cap is imposed, the rule should provide a limit of \$125 million as reflected by fiscal or calendar year 1993 audited financials.^{6/} See also June 14, 1994 CTIA Small Operators Caucus ex parte.

The Commission could, however, meet the requirements of the Budget Act by providing that bidding credits, installment payments and other benefits available to designated entities apply in all spectrum blocks for broadband PCS licenses. Such a proposal would have the significant advantage of allowing designated entities to determine what is the best course for them to participate in broadband PCS auctions. Furthermore, this proposal would ensure that the rules do not disqualify certain designated entities because their earnings exceed a revenue cap. BHI believes that this proposal is consistent with the broadband PCS generic auction rules and could be adopted by the Commission.

II. THE COMMISSION SHOULD ADOPT A VOTING CONTROL DEFINITION FOR MINORITY AND FEMALE-OWNED ENTITIES

The Second Report and Order provides a strict definition of minority and female-owned entities for designated entity purposes. To be classified as a "designated entity," minorities or women must have at least 50.1% equity ownership and 50.1% controlling interest in the auction applicant business enterprise. The interests of minorities and women will generally be calculated on a "fully-diluted" basis.

It is important that the Commission confirm that the equity ownership and control tests are applied to the ownership structures or partnership arrangements of the auction participant. This requirement would not apply to the parent corporation of the PCS designated entity. It should suffice for Commission purposes if a majority of the voting stock of the parent corporation of the applicant is controlled by a minority or woman.

III. MINORITY-CONTROLLED, PUBLICLY-TRADED COMPANIES SHOULD BE ELIGIBLE FOR ENTREPRENEUR BLOCK STATUS

BHI believes that the revenues of non-controlling ownership interests in publicly-traded, minority-controlled corporations should not be attributed to the PCS designated entity applicant. Pre-existing, non-controlling investments in a

^{6/} According to NCTA data, the average annual revenue for a basic cable programming service is \$150 million.

minority-controlled corporation by firms that do not qualify as designated entities should not disqualify an otherwise qualified designated entity. Given the extensive capital investment and tremendous costs associated with license acquisition, purchase and build-out of broadband PCS systems, any limitation on the ability of publicly-traded, minority-owned companies to participate in the bidding on Entrepreneur Block licenses, based on an arbitrary attribution standard, would defeat opportunities for minority participation in the PCS auctions and marketplace generally. In sum, minority-controlled, publicly-traded corporations should be allowed to create a qualified designated entity without having the upstream ownership interests, or the personal wealth of officers, directors or family members, attributed to its PCS designated entity.

IV. SIGNIFICANT BIDDING CREDITS ARE REQUIRED TO CREATE A LEVEL PLAYING FIELD FOR BIDDING

The implementation of broadband PCS services will cost hundreds of millions of dollars. Designated entities do not have access to the capital available to established telecommunications providers. Thus, to meet Congress' directive, the Commission should adopt a substantial bidding credit.

A bidding credit serves two functions: (1) it encourages designated entity participation; and (2) it creates an incentive for the financial community to view designated entities as viable PCS players. The availability of a substantial bidding credit would ensure independent minority-owned business participation in the auction process and ultimately in the provision of PCS.

Concerns regarding the ability of designated entities to compete in PCS auctions have been voiced repeatedly by both the Commission and Congress. Recently, Representative Mfume (D-MD) stated that a bidding credit of 72% may be necessary to permit designated entities to compete with companies with tremendous cash flows, such as Bell Atlantic.^{1/} Accordingly, BHI submits that a significant bidding credit is required if minority-designated entities are to be able to compete successfully for the 30 MHz blocks of spectrum and attract sufficient capital to satisfy the requisite build-out requirements.

^{1/} See Federal News Service, May 20, 1994, Comments of Representative Mfume.

V. THE COMMISSION SHOULD ADOPT STRICT RULES ON
HOLDING PERIODS TO PREVENT UNJUST ENRICHMENT
RESULTING FROM "SHAM" TRANSACTIONS

Finally, BHI supports the Commission's efforts to prevent auction winners from acquiring licenses for less than true market value at auction and then transferring them for a large profit prior to providing service.^{8/} However, BHI believes that license trafficking rules must be adopted and enforced. Specifically, BHI recommends that the Commission establish a 7-10 year holding period for all designated entities unless a transfer or assignment is made to another qualified designated entity. Such a rule will ensure that minorities and women retain the level of representation in the industry afforded by the implementation of the Commission's PCS auction rules.

VI. CONCLUSION

BHI believes that the Commission today faces one of the most challenging opportunities of this century. Not only will the Commission be determining the ground rules for the provision of new and innovative telecommunications services, but it will be shaping the competitive make-up of the future PCS marketplace. To ensure that all Americans are included in the communications revolution, however, it is imperative that the Commission's rules provide minorities and women significant opportunities in broadband PCS.

Respectfully submitted,

BET HOLDINGS, INC.

Robert L. Johnson / LJK

Robert L. Johnson
President and Chief Executive Officer

Attachment

8/ See Second Report and Order, at para. 212.

BET HOLDINGS, INC.
Competitive Bidding
PP Docket No. 93-253

DESIGNATED ENTITY PARTICIPATION IN PCS

A revenue cap for Entrepreneur Block eligibility should be set at \$125 million gross revenues and should be determined based upon fiscal or calendar year 1993 audited financials.

Non-controlling ownership interests in publicly-traded, minority-controlled corporations (e.g. majority voting control) should not be attributed to the PCS designated entity applicant.

Minority-controlled, publicly-traded corporations should be allowed to create a qualified designated entity without having the upstream ownership interests, or the personal wealth of officers, directors or family members, attributed to its PCS designated entity.

Significant bidding credits and other benefits should be available to minority and female applicants for all broadband PCS licenses.